H. R. 4483

To amend the Endangered Species Act of 1973 to increase State and local involvement in management plans.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2019

Mr. YOUNG introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Endangered Species Act of 1973 to increase State and local involvement in management plans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Localizing Authority of Management Plans Act of 2019” or the “LAMP Act of 2019”.

SEC. 2. REFERENCES.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a provision, the ref-
ereence shall be considered to be made to a provision of
seq.).

SEC. 3. VOLUNTARY COOPERATIVE MANAGEMENT AGREEMENTS.

Section 6 (16 U.S.C. 1535) is amended by striking
so much as precedes subsection (c) and inserting the fol-
lowing:

“SEC. 6. COOPERATION WITH NON-FEDERAL PERSONS.

“(a) GENERALLY.—In carrying out the program au-
thorized by this Act, the Secretary shall cooperate to the
maximum extent practicable with the States and other
non-Federal persons. Such cooperation shall include con-
sultation with the States and non-Federal persons con-
cerned before acquiring any land or water, or interest
therein, for the purpose of conserving any endangered spe-
cies or threatened species.

“(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

“(1) IN GENERAL.—The Secretary may enter
into a cooperative management agreement with any
State or group of States, political subdivision of a
State, Indian Tribe, local government, or non-Fed-
eral person—

“(A) for the management of a species or
group of species listed as endangered species or
threatened species under section 4, a species or
group of species proposed to be listed under
section 4, or species or group of species that
are candidates for listing; or

“(B) for the management or acquisition of
an area that provides habitat for a species.

“(2) Scope of Cooperative Management
Agreements.—(A) A cooperative management
agreement entered into under this subsection—

“(i) may provide for the management of a
species or group of species on both public and
private lands and waters that are under the au-
thority, control, or ownership of a State or
group of States, political subdivision of a State,
Indian Tribe, local government, or non-Federal
person and that are affected by a listing deter-
mination, proposed determination, or proposed
candidacy for determination; and

“(ii) may include the acquisition or man-
agement of land as habitat for species.

“(B) A cooperative management agreement
may not restrict private or non-Federal property un-
less written consent to such restrictions by the non-
Federal owner is given either to the Secretary or the
State, political subdivision, local government, or non-
Federal person who is a party to the agreement.

“(C) The Secretary may grant to a party to an
agreement the authority to undertake programs to
enhance the population or habitat of a species on
federally owned lands, except that such authority
shall not otherwise conflict with other uses of such
land that are approved by the Secretary or author-
ized by the Congress.

“(D) The Secretary is authorized, in conjunc-
tion with entering into and as a part of any agree-
ment under this section, to provide funds to carry
out the agreement to a non-Federal person, as pro-
vided in paragraph (11).

“(3) NOTIFICATION.—Not later than 30 days
after submission of a request to enter into a cooper-
ative management agreement, the party submitting
the request shall provide notice of the request to any
non-Federal person or Federal power marketing ad-
ministration that would be subject to the proposed
cooperative management agreement.

“(4) DEVELOPMENT OF PROPOSED AGREE-
MENT.—(A) The requesting party shall develop and
submit to the Secretary a proposed cooperative man-
agement agreement.
“(B) The Secretary shall—

“(i) publish in the Federal Register—

“(I) a notice of availability of any proposed cooperative management agreement; and

“(II) a request for submission within 30 days after the date of publication of the notice, of public comment on such proposed agreement; and

“(ii) shall hold a public hearing on such a proposed agreement in the county in which the proposed agreement would be in effect, if requested by a non-Federal person that would be subject to the proposed agreement and that resides in such county.

“(5) Approval of Agreement.—(A) Not later than 120 days after the submission of a proposed cooperative management agreement under paragraph (4), the Secretary shall determine whether the proposed agreement is in accordance with this subsection and will promote the conservation of the species to which the proposed agreement applies.

“(B) The Secretary shall approve and enter into a proposed cooperative management agreement, if the Secretary finds that—
“(i) the requesting party has sufficient au-

thority under law to implement and carry out

the terms of the agreement;

“(ii) the agreement defines an area that

serves as habitat for the species or group of

species to which the agreement applies;

“(iii) the agreement adequately provides

for the administration and management of the

identified management area;

“(iv) the agreement promotes the conserva-

tion of the species to which the agreement ap-
plies by committing Federal or non-Federal ef-
forts to the conservation;

“(v) the term of the agreement is of suffi-
cient duration to accomplish the provisions of

the agreement; and

“(vi) the agreement is adequately funded
to carry out the agreement.

“(C) No later than 30 days after entering into

a cooperative management agreement, the Secretary
shall publish in the Federal Register a notice of
availability of the terms of such agreement and the
response of the Secretary to all information received
or presented with respect to the agreement pursuant
to paragraph (4)(B).
“(6) ENVIRONMENTAL ASSESSMENTS.—Prepara-
ration, approval, and entering into a cooperative
management agreement under this subsection shall
not be subject to section 102(2) of the National En-
vironmental Policy Act of 1969 (42 U.S.C. 4332(2)).

“(7) NO SURPRISES.—For any species or area
that is the subject of a cooperative management
agreement under this subsection, a party to the
agreement shall not be required—

“(A) to make any additional payment for
any purpose, or to accept any additional restric-
tion on any parcel of land available for develop-
ment or land management under the agree-
ment, without consent of the party; or

“(B) to undertake any other measure to
minimize or mitigate impacts on the species in
addition to measures required by the agreement
as established.

“(8) EFFECT OF LISTING OF SPECIES.—A co-
operative management agreement entered into under
this subsection shall remain in effect and shall not
be required to be amended if a species to which the
agreement does not apply is determined to be an en-
dangered species or threatened species under section
4.
“(9) Applicability of certain provisions.—Sections 5, 7, and 9 shall not apply to those activities of a party to a cooperative management agreement that are conducted in accordance with such agreement.

“(10) Violations of agreements.—(A) If the Secretary determines that a party to a cooperative management agreement is not administering or acting in accordance with the agreement, the Secretary shall notify the party.

“(B) If a party that is notified under subparagraph (A) fails to take appropriate corrective action within a period of time determined by the Secretary to be reasonable (not to exceed 90 days after the date of the notification)—

“(i) the Secretary shall rescind the entire cooperative management agreement or the applicability of the agreement to the party that is the subject of the notification; and

“(ii) beginning on the date of the rescission—

“(I) the entire agreement shall not be effective, or the agreement shall not be effective with respect to the party, whichever is appropriate; and
“(II) sections 5, 7, and 9 shall apply to activities of the party.

“(11) FACA.—Consultation with States pursuant to this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).”.

SEC. 4. DELEGATION OF AUTHORITY TO STATES.

(a) In General.—Section 6 (16 U.S.C. 1535) as amended by section 3 of this Act, is further amended by striking subsection (c) and all that follows through subsection (f) and inserting the following:

“(c) State Authority to Protect Endangered Species and Threatened Species.—

“(1) Delegation of Authority.—In furtherance of the purposes of this Act, the Secretary may delegate to a State that establishes and maintains an adequate program for the conservation of endangered species and threatened species the authority under this Act with respect to species that are residents in the State. Within 120 days after the Secretary receives a certified copy of such a proposed State program, the Secretary shall make a determination whether such program will be adequate to provide protections to endangered species and threatened species in such State. In order for a State program to be determined to be an adequate
program for the conservation of endangered species and threatened species, the Secretary must find that under the State program—

“(A)(i) State agency has authority to conserve resident species that are determined by the State agency or the Secretary to be endangered species or threatened species;

“(ii) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species in the State that are determined by the Secretary to be endangered species or threatened species or for those species or taxonomic groups of species that the State proposes to cover under its program, and has furnished to the Secretary a copy of such plan and program together with all pertinent details and information requested by the Secretary;

“(iii) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident endangered species and threatened species;

“(iv) provision is made for public participation in designating resident species as endangered species or threatened species; and
“(v) the State agency has initiated or en-
couraged voluntary or incentive based programs
to further the conservation objectives for the
species; or

“(B)(i) the requirements set forth in
clauses (iii) and (iv) of subparagraph (A) are
complied with; and

“(ii) plans are included under which imme-
diate attention will be given to those resident
species that are determined by the Secretary or
the State agency to be endangered species or
threatened species and that the Secretary and
the State agency agree are most urgently in
need of conservation programs.

“(2) CONTENTS OF DELEGATION AGREE-
MENT.—(A) Such delegation shall provide for—

“(i) the actions to be taken by the Sec-
retary and the States;

“(ii) the benefits that are expected to be
derived in connection with the conservation of
endangered species or threatened species;

“(iii) the estimated cost of such actions;

and
“(iv) the share of such costs to be borne by
the Federal Government and by the States; ex-
cept that—

“(I) the Federal share of such costs
shall not exceed 75 percent of the esti-
mated program cost stated in the agree-
ment; and

“(II) the Federal share may be in-
creased to 90 percent if two or more States
having a common interest in one or more
endangered species or threatened species,
the conservation of which may be enhanced
by cooperation of such States, enter jointly
into an agreement with the Secretary.

“(3) COMPLIANCE WITH PROCEDURES.—In im-
plementing this Act under authority delegated to a
State by the Secretary, the State shall comply with
all requirements, prohibitions, and procedures set
forth by this Act.

“(4) PROHIBITIONS NOT AFFECTED.—A delega-
tion to a State whose program is determined ade-
quate under paragraph (1) shall not affect the appli-
cability of prohibitions set forth in or authorized
pursuant to section 4(d) or paragraph (1) or (2) of
section 9(a) with respect to the taking of any resi-
dent endangered species or threatened species in the
State.

“(d) FINANCIAL ASSISTANCE.—

“(1) IN GENERAL.—The Secretary may provide
financial assistance to any State, through its respec-
tive State agency, that has entered into a coopera-
tive management agreement under subsection (b) or
received authority under a delegation under sub-
section (c) of this section to assist in development of
programs for the conservation of endangered species
and threatened species or to assist in monitoring the
status of candidate species pursuant to subpara-
graph (C) of section 4(b)(3) and recovered species
pursuant to section 4(f). The Secretary shall allocate
among such States each annual appropriation under
subsection (i) based on consideration of—

“(A) the international commitments
of the United States to protect endangered
species or threatened species;

“(B) the readiness of a State to pro-
ceed with a conservation program con-
sistent with the objectives and purposes of
this Act;

“(C) the number of endangered spe-
cies and threatened species within a State;
“(D) the potential for restoring endangered species and threatened species within a State;

“(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species, in terms of survival of the species;

“(F) the importance of monitoring the status of candidate species within a State to prevent a significant risk to the well-being of any such species; and

“(G) the importance of monitoring the status of recovered species within a State to assure that such species do not return to the point at which the measures provided pursuant to this Act are again necessary.

“(2) UNOBLIGATED AMOUNTS.—So much of the annual appropriation made under subsection (i) allocated for obligation to any State for any fiscal year as remains unobligated at the end thereof may be made available to that State until the end of the succeeding fiscal year. Any amount allocated to any State that is unobligated at the end of the period during
which it is available for expenditure may be
made available for expenditure by the Secretary
in conducting programs under this section.

“(3) ADVANCE OF FUNDS.—The Secretary
may, in the Secretary’s discretion, and under
such rules and regulations as the Secretary may
prescribe, advance funds to the State for fi-
ancing the United States pro rata share
agreed upon in the cooperative agreement. For
the purposes of this section, the non-Federal
share may, in the discretion of the Secretary, be
in the form of money or real property, the value
of which shall be determined by the Secretary,
whose decision shall be final.

“(e) REVIEW OF STATE PROGRAMS.—Any action
taken by the Secretary under this section shall be subject
to his periodic review at intervals of no greater than 5
years.

“(f) CONFLICTS BETWEEN FEDERAL AND STATE
LAWS.—Any State law or regulation that applies with re-
spect to the importation or exportation of, or interstate
or foreign commerce in, endangered species or threatened
species is void to the extent that it may effectively—
“(1) permit what is prohibited by this Act or by
any regulation that implements this Act; or
“(2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation that implements this Act. This Act shall not otherwise be construed to void any State law or regulation that is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation that implements this Act.”.

(b) CONFORMING AMENDMENT.—Section 6(g)(2)(A) (16 U.S.C. 1535(g)(2)(A)) is amended to read as follows:

“(A) to which the Secretary has delegated authority under subsection (c); or”.

SEC. 5. FACA.

Section 6 (16 U.S.C. 1535), as amended by sections 3 and 4 of this Act, is further amended by adding at the end the following:

“(j) FACA.—Consultation with States regarding this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).”.